IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2656 OF 2005

Meena Binoo Banwarilal,
aged 20 years, residing at
MS/RB/II, 100/17, Central
Railway Colony, Kurla (West),
Mumbai-24. ... Petitioner

Versus.

1. State of Maharashtra
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai 400 032.

2. Scheduled Tribe Certificate
Scrutiny Committee, Konkan
Division, Thane through its
Deputy Director (R) and Member-
Secretary, having its office
at Wagale Estate, Thane (West),
Dist. Thane.

3. Directorate of Medical Education
Maharashtra State, having its
office at St.George's Hospital
Compound, CST, Mumbai 400 001.

4. Maharashtra University of
Health Science, having its
office at Diondori, Nashik-4.

5. Dean, Topiwala National
Medical College, Mumbai
Central, Mumbai. ... Respondents.

Shri R.K.Mendadkar for the Petitioner.

Shri A.A.Sayyad, A.G.P. for the Respondents.

CORAM : SMT.RANJANA DESAI &
ABHAY S. OKA, JJ.

DATED : 14th December, 2005.

ORAL JUDGMENT. (Per Abhay S.Oka, J.):

1. By this petition under Article 226 of the Constitution of India, the Petitioner has taken exception to the action of the Respondent No.5 of cancelling the admission granted to the Petitioner to MBBS Degree Course in Topiwala National Medical College at Mumbai.

2. The Petitioner claimed that he belongs to Meena Tribe which is recognised as a Scheduled Tribe in the State of Maharashtra. The Petitioner relied upon a caste certificate dated 26th December 2003 issued by the Deputy Collector, Mumbai Suburban Region. In the said certificate it is stated that the Petitioner belongs to Meena Tribe which is recognised as Scheduled Tribe in the State of Rajasthan. The Petitioner was provisionally admitted to the first year of the MBBS Degree course subject to production of caste verification certificate issued by the appropriate Scrutiny Committee. By order dated 21st May 2005, the Caste Scrutiny Committee declined to grant caste verification certificate on the ground that the Petitioner is a migrant to the State of Maharashtra and as such he is not entitled to derive the benefit of Scheduled Tribes from the State of Maharashtra. As a consequence of the order passed by the Scrutiny Committee, the Respondent No.5 passed an order dated

19th August 2005 stating that the provisional admission granted to the Petitioner to the MBBS Course stands cancelled. In this petition, the Petitioner has not challenged the order of the Caste Scrutiny Committee. Relying upon the two judgments of Division Bench of this Court, the submission of the Petitioner is that he has not obtained admission by practicing fraud and that the admission is not granted on the basis of any false statement made by the Petitioner. The submission of the Petitioner is that he produced the caste certificate issued by the Deputy Collector which itself discloses that the Petitioner is a migrant. The Petitioner submitted that as done by this Court in two other cases, his admission should be continued as he has completed the study for one academic year. The learned Counsel for the Petitioner stated that the Petitioner undertakes not to claim any benefit of the Scheduled Tribe in future in the State of Maharashtra and the Petitioner is ready to file an undertaking to that effect. The learned A.G.P. submitted that on the date on which the Petitioner was granted admission, he was not entitled to be admitted to the MBBS Course against a seat reserved for Scheduled Tribe. He submitted that as a result, one meritorious student belonging to Scheduled Tribe category has lost his chance of securing admission. He, therefore, submitted that the Petitioner is not entitled to any indulgence.

3. We have considered the submissions. It appears that the Petitioner produced the Caste Certificate issued by the Deputy Collector, Mumbai, in which it was certified that the father of the Petitioner belongs to Meena Tribe, which is recognised as a Scheduled Tribe in the State of Rajasthan. Thus while securing the admission, the Petitioner did not claim that he is entitled to the benefit in the State of Maharashtra. In an earlier Writ Petition No.49 of 2005 filed by the Petitioner, this Court by order dated 17th January 2005 protected the admission of the Petitioner till the Caste Scrutiny Committee decided his caste claim. Reliance is placed on a decision of this Court in Writ Petition No.4407 of 2005 (Nilesh P.Vaghela v/s. State of Maharashtra and others) decided on 22nd July 2005. It was a case of a student who had secured admission to B.Pharm. course on the basis of the caste certificate. In that case the Scrutiny Committee held that the Petitioner was a migrant from Gujarat State and therefore was not entitled to claim benefit of Scheduled Caste in the State of Maharashtra. This Court affirmed the order passed by the Caste Scrutiny Committee. While confirming the order of the Caste Scrutiny Committee, this Court passed the following order:

> "The learned Counsel for the petitioner submitted that the petitioner has already completed one Academic year of B.Pharm and he

may be allowed to continue his studies subject to furnished undertaking that he and his family members shall not claim benefit of the Scheduled Caste in future in the State of Maharashtra. We are inclined to accept the submission especially in view of the fact that the petitioner has already completed one year of the B.Pharm course and moreover the seat would go waste if his admission is cancelled at this stage. We direct the respondent not to cancel petitioner's admission and allow him to continue the course in the 2nd respondent college subject to petitioner and his father filing a written undertaking in this court within four weeks from today that they will not claim any benefit as belonging to Scheduled Caste in future in the State of Maharashtra. Petition is accordingly disposed of."

Reliance is also placed on a judgment and order dated 18th August 2005 passed in Writ Petition No.371 of 2003 (Kum.Sneha Baruwan Kini v/s. State of Maharashtra & ors.). This was also a case of a Petitioner whose Caste Certificate was invalidated by the Scrutiny Committee who had secured admission to medical course on the basis of the Caste Certificate which was invalidated. This Court while affirming the order of the Caste Scrutiny

Committee held thus:

> "2. It is then submitted by the learned Counsel for the petitioner that the petitioner is already admitted to medical college on the basis of this certificate which is now invalidated and is studying for the last two years. Now even by her being required to give up her studies, nobody will be benefited. The seat vacated by her now would be wasted for the remaining period. Nobody else can be granted that seat now because the course has progressed by two years. Apparently there is no evidence on record to show that the malafides were of the student herself. In such circumstances, we see no reason that the benefit of continuing her study in the seat already allotted to her be not given to her. We, therefore, dispose of this petition maintaining the order of invalidation, but direct the respondent to continue the petitioner in the medical course till she completes the M.B.B.S. examination.
>
> The petition accordingly disposed of."

In the present case there is no challenge to the order of the Scrutiny Committee. In the facts of the present case, it appears to us that the Petitioner did not

suppress the fact that he is a migrant from the State of Rajasthan while securing the admission to the Medical course. In the facts of this case, there are no allegations that the Petitioner secured admission by practicing fraud. The Petitioner was admitted to the said course for the academic year 2004-5 and the admission has been cancelled on 19th August 2005. It is not in dispute that now the seat occupied by the Petitioner cannot be given to anybody else and the said seat will go waste. Therefore, there is no reason why we should not follow the course adopted by this Court in Writ Petition Nos.4407 of 2005 and 371 of 2003.

4. Hence the following order is passed:

(i) Communication dated 19th August 2005 (Exh.A) is quashed and set aside.

(ii) The Petitioner is allowed to continue his studies in MBBS degree course subject to furnishing a written undertaking to this court within a period of four weeks from today that in future the Petitioner will not claim benefit of Scheduled Tribe in the State of Maharashtra for any purpose whatsoever.

(iii) If the petitioner fails to file the undertaking before this Court, the cancellation of admission of the petitioner will stand.

(iv) The parties to act on an authenticated copy of this order.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)